[2022] FWC 3320 [Note: An appeal pursuant to s.604 (C2023/148) was lodged against this decision - refer to Full Bench decision dated 29 June 2023 [[2023] FWCFB 97] for result of appeal.]

DECISION

Fair Work Act 2009
s.739—Dispute resolution

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)
and
United Workers' Union
v
FreshFood Management Services Pty Ltd
(C2022/5615 and C2022/5896)

COMMISSIONER MCKENNA SYDNEY, 22 DECEMBER 2022

Alleged dispute about any matters arising under the enterprise agreement and the NES; [s186(6)]

Background

[1] The "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) (the "AMWU") and the United Workers' Union (the "UWU") are in dispute with FreshFood Management Services Pty Ltd ("FFMS") about the proper operation of the *FreshFood Management Services Pty Ltd as a wholly owned subsidiary of FreshFood Australia Holdings Pty Ltd & The United Workers Union, The Australian Manufacturing Workers Union & The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia Enterprise Agreement 2019* ("the Agreement").

[2] FFMS is engaged in the manufacture, packaging, storage and wholesale of coffee and coffee products at its plant in Concord, New South Wales. The Agreement applies to FFMS and its non-administrative employees who are engaged in production, maintenance and warehouse functions. Most employees work Monday to Friday on day-shift and afternoon-shift, although there is a smaller number of employees who work on rotating morning, afternoon and night shifts over the course of the plant's seven-day operations.

[3] The AMWU and the UWU each have members who are employed by FFMS at its Concord plant. The first dispute (namely C2022/5615) was brought by the AMWU on behalf of its members and is principally confined to payment to employees for personal/carer's leave ("PCL") under the Agreement. A subsequent related dispute (namely C2022/5896) was brought by the UWU on behalf of its members, and that second dispute concerns both PCL and compassionate/bereavement leave ("CBL") under the Agreement.

[4] The unions' applications to deal with the disputes were made pursuant to s.739 of the *Fair Work Act 2009* (the "Act") and the operation of the disputes procedure set out in clause 12.2.7 of the Agreement. It is common ground that the Commission is empowered to arbitrate the two disputes concerning the Agreement.

[5] The submissions of the two unions have overlapping and concurring aspects concerning the operation of the Agreement. In each dispute, the unions relevantly contend that leave entitlements should attract a higher rate of pay than FFMS presently pays to relevant employees (with separate "quarantined" arrangements applying to a discrete cohort of employees). While there are two disputes before the Commission for determination, I will refer collectively to the two disputes as a singular "dispute". For its part and for the reasons outlined in its case, FFMS disagrees with the unions' contentions about payments for PCL and CBL.

[6] In the decision, I do not summarise all the submissions advanced by each union because their submissions essentially traverse the same territory in a complementary way concerning the dispute. It also should be noted that I do not summarise all the submissions advanced by FFMS; this is unnecessary, essentially because of my acceptance of the central planks of the primary case advanced by the unions concerning the operation of the Agreement coupled with my acceptance of the AMWU's submissions that certain matters advanced by FFMS unnecessarily complicate matters. As to that, I consider the question of interpretation arising is a fairly straightforward one which does not involve or necessitate the determination of the types of matters for which FFMS contended.

[7] The parties posed different questions for arbitral determination (with the union parties' outcomes seeking relevantly similar outcomes) and sought different outcomes. Given the overlapping nature of the subject matter of the disputes and the consent of the parties, the two matters were heard together.

[8] Separately, it is apposite to note that there was a third related application (AG2022/4489), which was scheduled to be heard in conjunction with the two s.739 disputes. That third application was brought by FFMS pursuant to s.217 of the Act seeking to vary the Agreement. The s.217 application was discontinued by FFMS on the day of the scheduled hearing. It may be noted that various matters addressed in the parties' submissions addressed ambiguity, but those submissions were more relevant to the discontinued s.217 application.

The relevant clauses

[9] The PCL clause relevantly reads, at 40.3.2 of the Agreement:

> "**40. Personal Leave (Sick & Carer's Leave):**
>
> …
>
> 40.3.2 If an Employee takes personal leave, the Employer must pay the Employee, for the period of the personal leave, the amount the Employee would reasonably have expected to be paid by the Employer if the Employee had worked during that period.

…".

[10] The CBL clause relevantly reads, at 44.1.7 of the Agreement:

"**44. Compassionate / Bereavement Leave:**

…

44.1.7 When an employee takes paid compassionate / bereavement leave, the Employer must pay the Employee the amount the Employee would have reasonably be [sic] expected to be paid if the Employee had worked during the period of compassionate leave.

…".

[11] There are two other provisions in the Agreement which arise for consideration in relation to the disputes. Clause 10 of the Agreement is a savings-type provision, which references an annexure to the Agreement. Both provisions featured in earlier iterations of the Agreement. Clause 10.2 reads as follows:

"**10. Savings Provision:**

10.1 …

10.2 Where existing conditions within an area provide for a higher outcome because of historical differences it is agreed that there is no obligation for the Employer to reflect these arrangements for any other employees, current or new across the site. These arrangements are "quarantined" and are described in Appendix 1. Any future change in work practices or employment arrangements will not import the quarantined conditions and will only reflect the terms and conditions specifically detailed in this Agreement, and these changes will be accepted unilaterally by all Employees.

APPENDIX 1 – Quarantine provisions attached."

[12] Appendix 1 to the Agreement, as referred to in clause 10.2, relevantly provides:

"Appendix 1: Quarantine Provisions – Instant Coffee Plant:

a. **Payment of overtime** – All overtime done outside ordinary hours is paid at the rate of double time.

b. **Shift Allowance** – 15% payable for ordinary hours (40) worked from Mon-Sun as well as the weekend penalty rates. Shift allowance is paid on sick leave and RDO's.

c. **Penalty Rates** - 4 hours penalty rates for working Saturdays. 8 hours penalty rates for working Sundays. 12 hours penalty rates for working Public Holidays.

> d. **Annual Leave Loading** – A loading of 37.5% of the ordinary weekly time rate of pay for the classification in which the employee was employed immediately before commencing annual leave (or the applicable shift loading whichever is the greater)."

[13] Last, as to clauses of relevance or potential relevance (as referred to the FFMS submissions), clause 7 provides as follows:

> "7. **Relationship with Parent Awards and the National Employment Standard:**
>
> …
>
> 7.3 Upon incorporating Award terms into the Agreement the incorporated Award terms are read as altered with appropriate changes to make them provisions of the Agreement rather than the award. So, for example, the loadings, penalties and allowances in the Award apply to the rates of pay due under the Agreement, not the Award rate.
>
> 7.4 Additionally if a term of this Agreement provides or an entitlement for an employee (the Agreement entitlement) that is the same as an entitlement under the National Employment Standard [NES] (the NES entitlement):
>
> > c. [sic] Those terms operate in parallel with the Employee's NES entitlement, but not so as to give the employee a double benefit; and
> >
> > d. [sic] The provisions of the National Employment Standard relating to the NES apply as a minimum standard, to the Agreement entitlement.
>
> 7.5 This Agreement shall be read and interpreted in conjunction with the National Employment Standards (NES) provided that where there is any inconsistency between this Agreement and the NES, the more beneficial provision to an employee shall take precedence."

The proposed questions

[14] The questions posed by the parties, with their proposed answers, were as follows.

[15] ***AMWU:*** The AMWU posed the following question as appropriate for the determination of C2022/5615:

> "In addition to payment for their ordinary hours, are employees who take personal/carer's leave entitled to shift allowances or penalties for the purposes of clause 40.3.2 of the Agreement?".

[16] The AMWU submitted that the answer to this question is Yes. Further, the AMWU seeks that the Commission makes the following orders:

> "1. Within 14 days of this decision, FreshFood must:

(a) identify any current and former employees who took personal/carer's leave and did not pay a shift loading or weekend penalty under the Agreement, or any predecessor instrument which contained the current entitlement;

(b) calculate what the employee would have received if they had been paid the shift loading or weekend penalty under the relevant instrument; and

(c) provide calculations to the AMWU and, on request, the relevant employees.

2. Within 7 days of Order 1 being complied with, FreshFood must pay each employee identified under Order 1(a) the amount calculated under Order 1(b) in relation to their employment; and

3. In the event that there is a dispute about the amounts calculated under Order 1, the parties are granted leave to have the matter relisted at short notice."

[17] ***UWU:*** The UWU posed the following question as appropriate for the determination of C2022/5896:

"Having regard to the provisions of the Agreement, is FFMS required to pay an employee shift allowances or penalty rates in addition to their weekly time rates of pay when that employee takes:

(a) personal leave (sick and carer's leave); or

(b) compassionate leave?".

[18] The UWU's question for determination extends beyond the PCL question posed by the AMWU, namely as to whether employees are entitled to shift allowances and penalties during CBL under clause 44.1.7 of the Agreement. The UWU submitted its question should be answered Yes, in respect of both PCL and CBL.

[19] The UWU also submitted that the orders proposed by the AMWU are an appropriate means to "finalise the dispute", within the meaning of clause 12.3 of the Agreement.

[20] ***FFMS:*** For the reasons developed in its submissions (which went, in part, to a purported lack of proper identification of what "amount" is contended by the unions to be paid under their respective interpretations of the Agreement), FFMS submitted that the questions as proposed and framed by the AMWU and UWU are inappropriate, and do not properly address and identify the dispute. FFMS put forward differently-formulated questions as being appropriate. For example, the submissions by FFMS as to such matters included the following:

"38. FFMS refers to and relies upon subclause 7.5 and submits that before there can be any consideration of the way personal leave under subclause 40.3.2 or compassionate/ bereavement leave under subclause 44.1.7 of the 2019 EA is to be paid there is a need to identify an inconsistency between on the one hand the NES provision and on the other hand the 2019 EA provision as unless the 2019 EA is found to be more beneficial the NES will prevail and apply.

39. FFMS submits that until a finding is made that there is an inconsistency and that a provision of the 2019 EA is more beneficial than that of the NES, the NES provision must apply. So much is made clear by the operation of subclause 7.4 of the 2019 EA.

40. FFMS submits that if this is the case then the question of "inconsistency" falls to be determined as identified and discussed in *Maribyrnong City Council v Australian Municipal, Administrative, Clerical and Services Union* [2019] FCA 773 at [43]-[53].

41. The necessary inquiry that must be made is whether there is a more beneficial provision under the 2019 EA for if there is not then the NES provision would prevail.

42. The NES provisions as to payment both for personal leave under section 99 of the FW Act and for payment of compassionate leave under section 106 of the FW Act provides that *"the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period"*.

43. FFMS submits that the questions to be first asked and answered is whether there is a more beneficial provision for the payment of personal leave under section 99 of the FW Act or for the payment of compassionate leave under section 106 of the FW Act or both.

44. If the answer be *"Yes"* to either or both then what next arises is to identify what the more beneficial provisions of the 2019 EA are in terms of the payment to be made by the employer to the employee when the identified paid leave is taken under the provisions of the 2019 EA.

45. In short, how is the amount to be paid by the employer to the employee to be calculated under the applicable provisions of the 2019 EA."

[21] FFMS posed the following questions as being appropriate:

"1. Does any employee employed under the terms and conditions contained within the Agreement as operative and applied in relation to the payment of:

(a) personal leave (sick leave)/carer's leave under clause 40.3.3; or,

(b) compassionate/bereavement leave under clause 44.1.7; or,

(c) both,

have any entitlement to payment of an amount calculated above their base rate of pay as defined in s.16 of the Act?

2. If the answer to Question 1 is "Yes" when and under what clause or clauses of the Agreement does the entitlement to an amount calculated at a rate above their base rate of pay arise under the Agreement for the purposes of:

(a) personal leave (sick leave)/carer's leave under clause 40.3.3; or,

(b) compassionate/bereavement leave under clause 44.1.7; or,

(c) both?

3. On the basis of the clause or clauses identified, if any, in answer to Question 2 how is "the amount" referred to in:

(a) personal leave (sick leave)/carer's leave under paragraph 40.3.3; or,

(b) compassionate/bereavement leave under paragraph 44.1.7; or,

(c) both

to be calculated?".

[22] FFMS submitted that the answers to the questions it identified are to be answered as follows:

- 1(a): Yes, provided the employee has a "quarantined arrangement" under the clause 10 savings provision of the Agreement;
- 1(b): Yes, provided the employee has a "quarantined arrangement" under the clause 10 savings provision of the Agreement;
- 1(c): Yes, if the position in relation to both 1(a) and 1(b) applies.
- 2(a): By the clause 10 savings provision of the Agreement and Appendix 1.
- 2(b): As in 2(a) above.
- 2(c): As in 2(a) and 2(b) above.
- 3(a): At the employee's base rate of pay for the purposes of the National Employment Standards ("NES") and clause 7.5 of the Agreement, other than where the employee has a "quarantined arrangement" under the clause 10 savings provisions and Appendix 1 of the Agreement.
- 3(b): As in 3(a) above.
- 3(c): As in 3(a) and 3(b) above.

[23] Contrary to the position advanced by the AMWU and adopted by the UWU in relation to the AMWU's proposed orders, FFMS submitted that the Commission could not make any of the proposed orders. FFMS further submitted the Commission is not able to determine the extended matter of alleged historic non-payment under this Agreement and predecessor agreements: *Airservices Australia v Civil Air Operations Officers' Association of Australia* [2022] FCAFC 17.

The unions' reply

[24] The AMWU submitted in reply to what was advanced for FFMS that the unions' questions adequately deal with the dispute, in circumstances where the entitlement to shift loadings or penalties will depend on the nature of work performed by any given employee. Consequently, there is no requirement to identify every shift loading or penalty that will be applicable to any given employee as part of the question. The phrase "weekly time rate of pay" is referred to in clauses 41.2 and 41.6, and in Appendix 1(d). It simply refers to what is otherwise understood as the "base rate of pay" under s.16 of the Act; the unions have adopted the phraseology used by the parties to the Agreement. There is no requirement for the Commission to identify an inconsistency between the terms of the Agreement and the NES for the Agreement to prevail. The questions propounded for determination by FFMS otherwise unnecessarily complicate the Commission's task; the unions' questions should be preferred. The UWU submitted that having regard to the answers proposed by FFMS in resolving the dispute, which were described by the UWU as "inverting" matters, the better approach would be for the Commission to resolve the dispute with reference to the UWU questions.

Consideration

[25] The principles concerning the interpretation of enterprise agreements are well-established. As such, those principles need not be recited in the decision – but see, for example, *AMWU v Berri Pty Ltd* [2017] FWCFB 3005 at [114] and, more recently, the majority judgment in *James Cook University v Ridd* [2020] FCAFC 123. I consider it unnecessary to describe matters including the evidence and the submissions in the case around developments that have occurred over the history of the different iterations of predecessor instruments to the Agreement, and/or the long-running history of unresolved disputation about payment for PCL and/or CBL under both the Agreement and its predecessors. It is also unnecessary to consider what was advanced around matters said to constitute, for example, a purported "common understanding".

[26] That is because, it seems to me, the words of the clauses in the current Agreement concerning PCL and CBL have a plain textual meaning (subject to what was, it is common ground, a minor typographical error in the CBL clause); and the import of the text is relevantly the same. The current Agreement is the instrument before me for arbitration of the dispute concerning its operation, not the Agreement's precursors. Following from the type of approach to the correct meaning of an instrument in *Bianco Walling Pty Ltd v Construction, Forestry, Maritime, Mining and Energy Union* [2020] FCAFC 50, the correct interpretation of the Agreement is apt for consideration, rather than, in this case, an examination of how the Agreement and its predecessors have been applied as a matter of historical payroll practice and more recent payroll practice.

[27] To return once again to the text of the PCL clause at 40.3.2 of the Agreement, it reads as follows:

> "If an Employee takes personal leave, the Employer must pay the Employee, for the period of the personal leave, the amount the Employee would reasonably have expected to be paid by the Employer if the Employee had worked during that period."

[28] The words in the Agreement concerning the PCL clause presuppose something different from, and/or more beneficial to employees than, what is set out as minimum conditions in s.99 of the Act as part of the NES and the Agreement-specific "wage rates". Specifically, s.99 provides that, under the NES, if an employee takes paid PCL, the employer must pay the employee at the employee's "base rate of pay" for the employee's ordinary hours of work in the period. Section 16 of the Act defines base rate of pay as excluding matters such as incentive-based payments, loadings, monetary allowances, overtime or penalty rates and/or any other separately identifiable amounts.

[29] Clause 40.3.2 of the Agreement does not use the "base rate of pay" formulation contained in the NES concerning payment to employees for PCL. However, as the AMWU submitted, the language in clause 40.3.2 can be distinguished from, for example, the meaning of the phrase "wage rates" in clauses 25 and 26 of the Agreement – with the Agreement's formulation comprising words which are effectively synonymous with the meaning of base rate of pay in the Act. I accept that part of submissions for the AMWU which read:

> "Had the parties intended for personal/carer's leave to be paid at the '*base rate of pay*', or '*wage rates*', they would have drafted the clause accordingly. Instead, the clause is drafted having regard to the employee's expectation of income had they worked."

[30] I also accept submissions for the UWU on the question of "wage rates", within the meaning of the Agreement, that read:

> "Had it been intended that employees be paid only an amount calculated at the weekly rates set at clauses 25 and 26, the 2019 Agreement, this would have averted [sic] to this by using different language found in the NES and elsewhere in the 2019 Agreement."

[31] In a similar vein to the PCL clause (albeit somewhat more clumsily-worded - given the minor typographical error that was introduced in a much earlier iteration of the Agreement and which continued thereafter in subsequent iterations without correction), the Agreement's CBL clause reads:

> "When an employee takes paid compassionate / bereavement leave, the Employer must pay the Employee the amount the Employee would have reasonably be [sic] expected to be paid if the Employee had worked during the period of compassionate leave."

[32] Similarly to the PCL provisions that I have earlier considered, the words in the Agreement concerning CBL also presuppose something different from, and/or more beneficial to employees than, the minimum standards set out in s.106 of the Act as part of the NES concerning paid compassionate leave. Specifically, s.106 provides that, under the NES, if an employee takes paid compassionate leave the employer must pay the employee at the

employee's base rate of pay for the employee's ordinary hours of work in the period. I have already noted the effectively synonymous meaning of "base rate of pay" as defined in 16 of the Act and the meaning of "wage rates" within the Agreement.

[33] FFMS contended that it has no obligation to pay employees for shift penalties and weekend penalties which they would have received, had they worked, during the period of PCL and CBL. The UWU submitted that the ordinary meaning of the phrase "the amount the Employee would reasonably have expected to be paid if the Employee had worked during the period of ... leave" refers to the total amount the employee should have been paid under the terms of the Agreement, had the employee worked his or her rostered hours in the period during which the PCL or the CBL is taken; and the calculation of payment is set by the expectation of the employee, subject to reasonableness (with the reasonableness of the expectation being conditioned by entitlements otherwise arising in the Agreement, such as to penalty rates).

[34] Notwithstanding the submissions by FFMS about what FFMS contended are the proper payments for PCL and CBL, I find that under the Agreement FFMS is bound to pay an employee, for the period of the PCL and the period of CBL the amount an employee reasonably would have expected to have been paid by FFMS if the relevant employee had worked during that period – as exampled in the following quote from the AMWU's submissions:

> "13. To that end, if, for example, an employee was working an afternoon shift or night shift, they could reasonably expect to be paid an afternoon or night shift allowance, as they [sic] case may be. If an employee who is entitled to receive a shift allowance undertook weekend work, they could reasonably expect to be paid the higher penalty (without double counting) pursuant to cl.37.5.1 of the Agreement. The same approach to interpretation must be applied in determining the entitlements conferred upon employees when they take personal/carer's leave."

[35] In submissions to similar overall effect as those advanced by the AMWU, the UWU submitted:

> "25. The UWU submits that the ordinary meaning of the phrase *"the amount the Employee would reasonably have expected to be paid if the Employee had worked during the period of ... leave*" refers to the total amount that the employee should have been paid under the terms of the 2019 Agreement, had they worked their rostered hours in the period during which the personal leave or the compassionate leave is taken.
>
> 26. The calculation of payment is set by the expectation of the employee, subject to reasonableness.
>
> 27. An employee to whom the 2019 Agreement applies would, in the event that they worked on a weekend or on a shift at times attracting a shift allowance, expect that they be paid the shift allowances and penalties otherwise payable to them under the terms of an enterprise agreement that applied to them.
>
> 28. This expectation is reasonable in circumstances where the provisions of that enterprise agreement would require those amounts to be paid."

[36] The UWU's submissions continued (references not reproduced):

> "32. The deliberate and substantial difference in wording in respect of payment for personal leave and compassionate leave under the 2019 Agreement in comparison to the NES is a contextual indicator that the parties intended to provide for a different and more beneficial entitlement to that provided for under the NES.
>
> 33. Further, while the 2019 Agreement does not refer to a "base rate of pay", it does provide for a functionally similar "weekly rates" or "weekly time rates", which are set at at [sic] clause 25 and 26 of the 2019 Agreement for maintenance and production/ warehouse employees respectively. The "weekly rate" or "weekly time rate" is used as the basis for the calculation for a number of entitlements under the 2019 Agreement.
>
> 34. Had it been intended that payment for personal leave and compassionate leave be set by the weekly rate or the weekly time rate set out in the 2019 Agreement, it would have been open to the parties to set this out expressly.
>
> 35. Again, clauses 40.3.2 and 44.1.7 of the 2019 Agreement are expressed in terms that differ from this simple formulation, which invites a conclusion that the payments provided for at those sub-clauses are calculated at a different and more beneficial rate than the entitlements which are expressed to be calculated on the basis of the "weekly rate" or the "weekly time rate"."

[37] I find the proper construction of the Agreement requires an objective inquiry into the amount the relevant employee would reasonably expect to have been paid during a period of leave, had the employee worked during that period – contextualised by reference to what payments would attach under the Agreement to working the particular days/shift hours in question rather than, for example, some subjective-type opinion of what was fair and proper.

[38] I do not consider that the savings provision in clause 10.1 of the Agreement and Appendix 1 relevantly arise for consideration in relation to PCL and CBL more broadly. Those provisions of the Agreement are dedicated provisions designed to deal with discrete matters concerning a particular cohort of employees. For example, as the AMWU's submissions put matters (references not reproduced):

> "18. The reference to '*instant coffee plant*' in Appendix 1 is only referable to rotating shift workers engaged in instant coffee processing. This aligns with the other provisions in the Agreement that reference the '*instant coffee plant*', as well as the current payment practice whereby rotating shift workers engaged in instant coffee processing receive a 15% shift allowance during a period of personal/carer's leave in accordance with Appendix 1, whilst afternoon and night shift workers do not.
>
> 19. The payment of a 15% shift loading during a period of personal/carer's leave for rotating shiftworkers reflects the averaging arrangement for shift loadings. That is, rotating shift workers are paid an average 15% loading so that their income is flat, rather than receiving a fluctuating income arising from the entitlement to no loading for a day shift, 15% loading for an afternoon shift or 30% for a night shift, as the case may be."

Disposition of the dispute

[39] I do not accept that the questions as framed by FFMS need to be addressed, even if I accepted the underpinnings as advanced in FFMS's submissions. That conclusion concerning the FFMS questions arises from my acceptance of the submissions advanced in the unions' cases about such matters. Instead, I accept that the question/s advanced by the unions are appropriate to answered (and answered in the affirmative). It is convenient to answer the question posed by the UWU, as it traverses not only PCL but also CBL. I answer "Yes" to the following question:

> "Having regard to the provisions of the Agreement, is FFMS required to pay an employee shift allowances or penalty rates in addition to their weekly time rates of pay when that employee takes:
>
> (a) personal leave (sick and carer's leave); or
>
> (b) compassionate leave?"

[40] Even if I had power to do so (noting that FFMS submitted such orders would be beyond power), I would not be minded, in the exercise of discretion, to make the orders proposed by the unions. As I would not be minded to make the proposed orders, it is unnecessary to consider the competing submissions concerning the scope power and of the particular proposed orders.

[41] Instead, I say this to "finalise the dispute": as a corollary to the question I have answered in arbitration of the dispute, self-evidently FFMS, in future, is expected to take necessary payroll steps that are consistent with the arbitrated outcome concerning payment rights and obligations for relevant employees under the current Agreement attaching to PCL and CBL. I add that FFMS, also self-evidently, would be well-advised to consider what steps it now needs to take with respect to rectifying past underpayments.

[42] I separately note the submissions indicated that voting for a new/replacement enterprise agreement was underway on the same day as the hearing (the outcome of the ballot was not known when the hearing proceeded). I was informed that the proposed enterprise agreement contains provisions in the same terms as the Agreement concerning PCL and CBL. The submissions indicated, in effect, that the decision of the Commission about PCL and CBL would be honoured by FFMS concerning the operation of the new enterprise agreement if/when made by a vote of employees and approved by the Commission.

[43] The proceedings before the Commission in relation to C2022/5615 and C2022/5896 are now concluded.

COMMISSIONER

Appearances:

S Howe for the United Workers' Union.
J Martin for the Australian Manufacturing Workers' Union.
R Moore of counsel for FreshFood Management Services Pty Ltd.

Hearing details:

2022.
Sydney:
December 7.

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